

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 02 2013

Office: COLUMBUS, OH

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer Director, Columbus, Ohio, and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant has filed a motion to reopen. The motion will be granted. The AAO's May 6, 2011 decision will be withdrawn. The appeal will be sustained.

The applicant is a native and citizen of Liberia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director denied the waiver application upon finding that she had failed to establish that her inadmissibility would result in extreme hardship to a qualifying relative. *See Decision of the Field Office Director* dated September 10, 2008. The applicant appealed and the AAO dismissed her appeal finding that, although her spouse would face extreme hardship should he relocate to Liberia, the record did not establish that remaining in the United States without the applicant would result in extreme hardship. *See Decision of the AAO dated May 6, 2011.*

The applicant now seeks reopening claiming that since her appeal, her spouse's "financial and health concerns have deteriorated." *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion.* In support of her motion to reopen, the applicant submits, in relevant part, a brief; a letter from [REDACTED] (a certified public accountant); tax documents; medical bill from the Ohio State University; letter from [REDACTED] (an optometrist) and [REDACTED] (a licensed social worker); and new affidavits executed by the applicant and her spouse.

The AAO finds that the new evidence submitted in support of the applicant's motion establishes that the applicant's inadmissibility would result in extreme hardship to her qualifying relative. The AAO noted the applicant's spouse's medical and financial concerns in its May 6, 2011 decision. The additional evidence submitted confirms the claims made on appeal, and establishes that the applicant's spouse would face hardship beyond that which is commonly experienced by individuals in similar circumstances. The AAO notes the applicant's spouse's health concerns, which included his difficulty driving due to his vision problems. The AAO also notes the applicant's spouse's financial circumstances. The additional documentation provided with the applicant's motion demonstrates that the applicant's spouse would face extreme financial and emotional hardship without the applicant's care and support. The evidence in the record, including the documentation submitted in support of the applicant's motion, establishes that the applicant's spouse's medical and financial circumstances warrant a finding that he would face extreme hardship due to separation from the applicant.

The AAO finds that the applicant has established that her inadmissibility would result in extreme hardship to her qualifying relative and therefore concludes that she is statutorily eligible for a waiver of grounds of inadmissibility.

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In that the applicant has established that the bar to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether she merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's fraudulent attempt to procure an immigration benefit that resulted in her inadmissibility. The favorable or mitigating factors in the present case include the applicant's relationship with her U.S. citizen spouse and the extreme hardship he would face if the waiver application is denied. In balancing the mitigating and adverse factors in the present case, including those mentioned, the AAO finds that the favorable factors in the present matter outweigh the negative. A favorable exercise of the Secretary's discretion is therefore warranted in this case.

The burden of proving eligibility in these proceedings remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Her motion to reopen is granted, the AAO's May 6, 2011 decision will be withdrawn, and the appeal will be sustained.

ORDER: The motion is granted. The AAO's May 6, 2011 decision is withdrawn. The appeal is sustained.